



April 1, 2002

Mr. Tim Molina  
Assistant Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2002-1545

Dear Mr. Molina:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160996.

The Office of the Attorney General (the "OAG") received a request for the "Accident Report and/or police report" related to a named individual and an incident which occurred on November 24, 2000. You state that some responsive information has been released to the requestor. You claim that a portion of the requested information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code, the "law enforcement exception," excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law

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<sup>1</sup>In requesting this decision, you invoked "All of the exceptions provided by, and the exceptions incorporated into, Sections 552.101 through 552.137 of the PIA." We note that you have only provided arguments in support of your section 552.108 claim. As you did not submit to this office written comments stating the reasons why sections 552.102 through 552.107 and 552.109 through 552.137 would allow the information to be withheld, we find that you have waived these exceptions. See Gov't Code §§ 552.301, .302.

enforcement. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). The submitted information consists of an offense report from the Freestone County Sheriff's Department that was submitted to the OAG's Crime Victims Compensation Division. You have submitted a written statement from the County/District Attorney for Freestone County, stating that, because there is a pending appeal, release of the report at issue would interfere with the detection, investigation, or prosecution of crime. Based on this representation, we find that the release of that report would interfere with an ongoing criminal case, and therefore the submitted offense report is subject to section 552.108(a)(1).

We thus conclude that the OAG may withhold, under section 552.108(a)(1), the submitted offense report. See Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision Nos. 474 at 4-5 (1987), 372 at 4 (1983) (both stating that any proper custodian of information relating to an incident involving allegedly criminal conduct that is under active investigation or prosecution may invoke section 552.108).

We also note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. Thus, the OAG must release to the requestor the kind of information that is considered to be basic front-page information, including a detailed description of the offense and the identity and description of the complainant, even if this information does not actually appear on the front page of the offense or arrest report, with the following possible exception. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

We note that information which would identify or tend to identify the crime victim may be excepted from disclosure under section 552.132 of the Government Code. Section 552.132 provides as follows:

(a) In this section, "crime victim" means a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(b) A crime victim may elect whether to allow public access to information held by the crime victim's compensation division of the attorney general's office that relates to:

(1) the name, social security number, address, or telephone number of the crime victim; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

(c) An election under Subsection (b) must be:

(1) made in writing on a form developed by the attorney general for that purpose and signed by the crime victim; and

(2) filed with the crime victims' compensation division before the third anniversary of the date that the crime victim filed the application for compensation.

(d) If the crime victim elects not to allow public access to the information, the information is excepted from the requirements of Section 552.021. If the crime victim does not make an election under Subsection (b) or elects to allow public access to the information, the information is not excepted from the requirements of Section 552.021 unless the information is made confidential or excepted from those requirements by another law.

(e) If the crime victim is awarded compensation under Section 56.34, Code of Criminal Procedure, as of the date of the award of compensation, the name of the crime victim and the amount of compensation awarded to that victim are public information and are not excepted from the requirements of Section 552.021.

Gov't Code § 552.132. We interpret section 552.132 to afford crime victims or claimants three years from the date of filing an application for compensation in which to submit an election for disclosure or non-disclosure. *See* Gov't Code § 552.132(c)(2). Once the three years have elapsed, if the crime victim or claimant has not made an election or has elected to allow public access to the information, the information described in section 552.132(b) may not be withheld, unless it is made confidential or excepted from those requirements by another law. *See id.* § 552.132(d). However, during those three years, we find that the information is excepted from required disclosure under section 552.132 where a crime victim or claimant has not yet submitted an election for non-disclosure. *See id.* § 552.132(c)-(d).

In this instance, you do not state whether the crime victim has submitted an election for non-disclosure. However, because three years have not elapsed since the dates that the crime victim filed the applications for compensation, we find that if no election form has been submitted under section 552.132(b), the OAG ordinarily would be required to withhold the types of information described by section 552.132(b). However, because the requestor in this instance is the attorney for the crime victim, he has a special right of access to this information under section 552.023. Under section 552.023 of the Government Code,

[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

Gov't Code § 552.023(a). Therefore, in this case, the OAG must release the identity of the victim to the requestor.

In summary, the OAG may withhold, under section 552.108(a)(1), the submitted offense report. Basic front-page information, including a detailed description of the offense, the identity and description of the complainant, and the identity of the victim must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/seg

Ref: ID# 160996

Enc. Submitted documents

c: Mr. James Browning  
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(w/o enclosures)